

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-6321

JUDLIN MORTIMER,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Graham C. Mullen, Chief District Judge.
(CR-96-176, CA-98-7)

Submitted: June 8, 1999

Decided: June 21, 1999

Before HAMILTON, LUTTIG, and WILLIAMS, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Judlin Mortimer, Appellant Pro Se. Robert Jack Higdon, Jr., OFFICE
OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Appellant Judlin Mortimer appeals the July 14, 1998 district court order construing his filing seeking to withdraw pending motions as withdrawing his motion filed under Fed. R. Crim. P. 41(e).^{*} After Mortimer moved to withdraw pending motions, but before the court entered the July 14 order, Mortimer informed the court that he did not wish to withdraw the Rule 41(e) motion. Because Mortimer informed the court that he did not wish to withdraw the Rule 41(e) motion, and because pro se filings should be construed liberally, see Haines v. Kerner, 404 U.S. 519, 520 (1972), we vacate the July 14 order and remand for further proceedings on the Rule 41(e) motion. We deny Mortimer's motion to amend the record on appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

VACATED AND REMANDED

^{*}The July 14, 1998 order is marked as "filed" on July 13, 1998. The district court's records show that it was entered on the docket sheet on July 14, 1998. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date the order is entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murray, 806 F.2d 1232, 1234-35 (4th Cir. 1986).

This appeal was originally construed as an appeal from the district court's December 9, 1998 judgment denying Mortimer's 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998) motion. However, Mortimer's district court filings, including the August 3, 1998 "motion for appeal under Rule 4(a)," the August 10, 1998 "petition for permission to appeal," the February 10, 1999 "motion seeking disposition of defendant's Rule 41(e) motion" and his informal brief filed in this court reveal that Mortimer intended to appeal the order disposing of the Rule 41(e) motion.